

AMENDED IN SENATE MAY 18, 2000
AMENDED IN SENATE AUGUST 26, 1999
AMENDED IN SENATE AUGUST 18, 1999
AMENDED IN SENATE JUNE 9, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1455

Introduced by Assembly Member Scott
(Principal coauthor: Assembly Member Knox)

February 26, 1999

~~An act to amend Sections 2870 and 2871 of, and to add Section 2872 to, the Civil Code, to amend Section 1778 of, and to add Sections 1785 and 1786 to, the Code of Civil Procedure, and to amend Section 790.035 of, and to add Section 1872.91 to, the Insurance Code, relating to insurance. An act to add Section 1371.9 to the Health and Safety Code, relating to health care service plans.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1455, as amended, Scott. ~~Insurance: claims dispute resolutions~~ *Health care service plans: unfair trade or business practices.*

The Knox-Keene Health Care Service Plan Act of 1975 provides for the regulation and licensure of health care service plans by the Department of Managed Care, effective no later than July 1, 2000, or earlier pursuant to an executive order of the Governor, and makes the willful violation of the

provisions of this act a crime. Under existing law, the director of the department is required to administer and enforce the act and is provided with certain powers in this respect, including the power to conduct investigations affecting the interests of plans, subscribers, enrollees, and the public; to audit the books and records of plans; to hold public hearings, to issue subpoenas, to take testimony, and to compel the production of books, papers, documents, and other evidence.

This bill would authorize a plan enrollee, an enrollee's representative, or an enrollee's provider to petition the director to investigate an allegation that a health care service plan has engaged in an unfair trade or business practice, as defined, in its reimbursement of a provider of health care services and would require the director, as he or she deems necessary, to investigate the allegation, conduct a hearing or an audit, and subpoena witnesses and documents to determine whether the plan committed an unfair trade or business practice. This bill would authorize the director to fine a health care service plan that he or she determines has committed an unfair trade or business practice and would authorize the department to audit the plan annually, as specified, to verify whether it engaged in further unfair trade or business practices. This bill would require a plan found as a result of this audit to have engaged in that practice to reimburse, for a specified period, 70% of the total amount of each claim submitted by a provider within 10 days of the plan's receipt of the provider's claim.

Because this bill would add to the act specified reimbursement requirements for plans found during these audits to have committed further unfair trade or business practices, a willful violation of which would be a crime, this bill would expand the scope of an existing crime and thereby impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.



~~Existing law prohibits insurers from engaging in unfair claims settlement practices, and provides for sanctions against insurers who engage in unfair claims settlement practices with respect to coverage under a policy of liability insurance by means of administrative sanctions against the insurer. SB 1237 of the 1999 2000 Regular Session, the Fair Insurance Responsibility Act of 2000 or “FAIR,” would provide that an insurer shall act in good faith toward and deal fairly with 3rd party claimants. It would provide that if an insurer engages in unfair claims settlement practices with respect to a 3rd party claimant, the 3rd party claimant would generally have the right, upon meeting certain conditions, to assert a cause of action against the insurer, except as specified. It would permit binding arbitration for specified personal injury claims.~~

~~This bill would make changes to the provisions of SB 1237 if SB 1237 becomes operative. Among those changes would be the elimination of the use of verdict amounts as evidence of insurer bad faith, restricting 3rd party bad faith actions to natural persons and specified associations in which damages awarded were not less than \$1,000,000, prohibiting businesses from filing 3rd party bad faith actions, limiting the prospective effect of that bill’s new 3rd party rights as to prior accidents, events, occurrences, or losses, revising the presumption regarding insurer good faith and fair dealing arising from the submission of relevant claims to arbitration, and limiting the operative dates for both 3rd party rights and the application of binding arbitration.~~

~~Existing law permits the Insurance Commissioner to impose civil penalties for any unfair method of competition or any unfair or deceptive act or practice relating to insurers settling claims.~~

~~This bill would require the Insurance Commissioner to impose and collect a civil penalty, as specified, from insurers against whom a judgment or award is entered in a 3rd party bad faith action. The bill would provide that the civil penalty shall be deposited in the General Fund, and would require the commissioner to investigate every written complaint alleging specified unfair or deceptive acts by insurers. The bill would require the commissioner to adopt a standard form for~~

~~complaints by January 31, 2000, and to provide assistance to complainants, as specified.~~

~~The bill would require the State Auditor to study the effects of the FAIR plan, and to deliver his or her report to the Governor and the Legislature on or before January 1, 2005.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 2870 of the Civil Code, as added~~
2 ~~SECTION 1. Section 1371.9 is added to the Health and~~
3 ~~Safety Code, to read:~~
4 ~~1371.9. (a) An enrollee, an enrollee's representative,~~
5 ~~or an enrollee's provider may petition the director to~~
6 ~~investigate an allegation that a health care service plan~~
7 ~~has engaged in an unfair trade or business practice, as~~
8 ~~defined in this section, in its reimbursement of a provider.~~
9 ~~(b) An unfair trade or business practice includes all of~~
10 ~~the following:~~
11 ~~(1) Practices set forth in Chapter 5 (commencing with~~
12 ~~Section 17200) of Division 7 of the Business and~~
13 ~~Professions Code.~~
14 ~~(2) Failure to reimburse providers within the~~
15 ~~timeframes set forth in Section 1371.~~
16 ~~(3) Repeated failures to reimburse the undisputed~~
17 ~~portion of a claim pursuant to Section 1371.~~
18 ~~(4) A repeated delay or a pattern of delaying the~~
19 ~~reimbursement of claims for administrative errors or~~
20 ~~omissions of a nonsubstantive or technical nature.~~
21 ~~(5) Repeated failures to reimburse substantially~~
22 ~~complete claims.~~
23 ~~(6) Substantial deviation from the timely~~
24 ~~reconciliation of risk pools, withholds, and other~~
25 ~~risk-based arrangements with providers.~~
26 ~~(c) After receipt of a petition to investigate an~~
27 ~~allegation of an unfair trade or business practice by a~~
28 ~~health care service plan, the director shall, as the director~~
29 ~~deems necessary, as authorized by Section 1346,~~
30 ~~investigate; audit; conduct a hearing; subpoena witnesses;~~

1 *take testimony; compel the production of books, papers,*
2 *documents; and other evidence to obtain information*
3 *required to enforce the provisions of this section.*

4 *(d) If the director determines that a health care*
5 *service plan has engaged in an unfair trade or business*
6 *practice, the director may fine the plan not less than two*
7 *thousand five hundred dollars (\$2,500) for each unfair*
8 *trade or business practice committed by the plan. If the*
9 *director determines as a result of a subsequent petition*
10 *that the health care service plan has engaged in an unfair*
11 *trade or business practice, the director may fine the plan*
12 *not less than twenty-five thousand dollars (\$25,000) for*
13 *each of the unfair trade or business practices committed*
14 *by the plan. If the director determines as a result of any*
15 *further petitions that the health care service plan has*
16 *engaged in an unfair trade or business practice, the*
17 *director may fine the plan not less than two hundred fifty*
18 *thousand dollars (\$250,000) for each of the unfair trade or*
19 *business practices committed by the plan.*

20 *(e) The department shall annually audit each health*
21 *care service plan that the director previously determined*
22 *has engaged in an unfair trade or business practice for a*
23 *period not to exceed five years from the time of the*
24 *director's determination to verify the plan has not*
25 *engaged in further unfair trade or business practices.*
26 *Notwithstanding any other powers or remedies available*
27 *to the director, if the director determines as a result of the*
28 *audit that the plan has engaged in an unfair trade or*
29 *business practice, the plan shall for a period not to exceed*
30 *five years from the date of the director's determination,*
31 *or for a shorter period prescribed by the director,*
32 *reimburse 70 percent of the total amount of each claim*
33 *submitted by a provider within ten days of the plan's*
34 *receipt of the provider's claim. Each health care service*
35 *plan audited pursuant to this subdivision shall reimburse*
36 *the department for all costs incurred by the department*
37 *in conducting the audit.*

38 *(f) In addition to any other powers or remedies*
39 *available to the director, the director may issue an order*
40 *directing a health care service plan to cease and desist*

1 *from engaging in any unfair trade or business practice, as*
2 *determined by the director. Nothing in this section shall*
3 *be construed as affecting the director's authority*
4 *pursuant to Article 7 (commencing with Section 1386) or*
5 *Article 8 (commencing with Section 1390).*

6 *(g) The enforcement remedies provided in this*
7 *section are not exclusive and shall not limit or preclude*
8 *the use of any other criminal, civil, or administrative*
9 *remedy otherwise available.*

10 *(h) In addition to any other authority granted to the*
11 *director or department, the director is authorized to*
12 *study and evaluate other methods that may be available*
13 *to enforce the law relating to unfair trade or business*
14 *practices and may promulgate regulations pertaining to*
15 *those methods.*

16 *SEC. 2. No reimbursement is required by this act*
17 *pursuant to Section 6 of Article XIII B of the California*
18 *Constitution because the only costs that may be incurred*
19 *by a local agency or school district will be incurred*
20 *because this act creates a new crime or infraction,*
21 *eliminates a crime or infraction, or changes the penalty*
22 *for a crime or infraction, within the meaning of Section*
23 *17556 of the Government Code, or changes the definition*
24 *of a crime within the meaning of Section 6 of Article*
25 *XIII B of the California Constitution.*

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**All matter omitted in this version of the
bill appears in the bill as amended in the
Senate, August 26, 1999 (JR 11)**